IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.203/2001
J.V.V.N.L.& Anr.Vs.Sikandar Khan & Ors.

Against judgment and decree dated 10.05.2001 passed by Addl. District Judge, Bali in Civil Original Suit No. 8/1996 – Sikandar Khan & Ors. Vs. Jodhpur Vidhyut Vitran Nigam Limited & Anr.

DATE OF JUDGMENT: 12th May,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Sumeet Mehta for appellants.

Through this appeal filed under Sec.96 of the Civil Procedure Code, the defendant-appellants have challenged the judgment and decree dated 10.05.2001 passed by Addl. District Judge, Bali in Civil Original Suit No. 8/1996 (Sikandar Khan & Ors. Vs. Jodhpur Vidhyut Vitran Nigam Limited & Anr.) decreeing the suit in favour of respondent-plaintiffs for an amount of Rs.67,2000/- with interest @9%

from the date of filing of the suit.

The plaintiff-respondents, are the children and mother of deceased Mumtaz, who died on account of being electrocuted. In the suit, filed before the Addl. District Judge, Bali, it was inter-alia, averred that Late Mumtaz, was a lady deserted by her husband, who was living independently with her tiny tots in a rented premises in Meghwalon ka Bas, Sadri and earning her livelihood by preparing beddings, quilts, selling clothes etc. When Mumtaz was putting clothes on a string for drying, she came in contact with electric current and while being taken to hospital died on the way. A report of the incident was registered at Police Station, Desuri under Sec. 174 Cr.P.C. and investigation started. The postmortem of the deceased was conducted at Govt. Hospital, Sadri and during investigation it was found that the wire on which the clothes were being put for drying passed the electric current and she having come in contact thereof

died. It was further averred that it was the duty of the defendants to maintain the electric lines properly but due to their negligence and carelessness such an incident occurred which took the life of Mumtaz for which only the defendants are liable. It was stated that Mumtaz was earning Rs.2,500/- per month and after her death her children have become orphan and they have no means for their sustenance. In all, the plaintiffs claimed an amount of Rs.6,30,000/- as compensation with interest till realization.

Appellant-defendants filed written statement taking a plea that in the case in hand the husband of the deceased was a necessary party and not the mother. The defendants also took the stand that their responsibility is limited to maintain the electric lines on poles and from pole to the connection at premises and inside premises the responsibility to maintain the lines rests on the consumers. The defendants though in Para 3

of the written statement denied their knowledge about the residence of deceased but in para 4 have stated that there was loose wiring in the rooms of residential house of deceased Mumtaz by the side of walls and in the open chowk one iron string was there parallel to it and the electricity line was containing only two wires without there being earth-wire which was technically necessary. They emphatically denied their responsibility for the death of Mumtaz and prayed for dismissal of the suit with cost.

The learned trial Court on the basis of pleadings of parties, framed issues as under:

1. Whether death of Smt. Mumtaz occurred due to electric shock and due to that the plaintiffs are entitled to receive compensation of Rs.6,30,000/-,as mentioned in Para No.12 of the plaint?

2. Whether deceased Mumtaz being herself responsible for her death, the defendants are not responsible for payment of compensation?

3. Whether plaintiff No.3 not being the legal heir of deceased, suit is liable to be dismissed?

4. Whether the husband of the deceased is a necessary party to the suit?

5. Whether landlord is wholly responsible for the incident and is also a necessary party to the suit?

6. Whether the defendants are entitled to receive Rs.2000/- as exemplary cost from the plaintiffs.

7. Relief?

The plaintiffs in support of their case, examined PW1 Sikandar Khan, PW2 Salim Khan and in documentary evidence documents Ex.1 to 16 were exhibited. From the side of defendants, statement of DW1 Mahesh Kumar Vyas was got recorded and the evidence was closed. The learned trial Court after hearing the parties, decreed the suit as aforesaid. Hence, the present appeal.

The contention of the learned counsel for the appellants is that the learned trial Court has not properly appreciated the evidence and infact there was no negligence on the part of the respondents, therefore, the findings recorded on issues by the trial Court are

perverse and as such the judgment and decree passed by the learned trial Court deserves to be quashed and set aside.

I have considered the submissions made before me.

In the present case, PW1 Sikandar Khan, son of deceased, in his statement on oath has supported the factum of deceased's death on account of electric current and has stated that the current was leaking from the service line and the fault was at the hook from where the current passed though the wall and when his mother went to tie the clothes for drying she was electrocuted. He has supported the earnings of his mother to the tune of Rs.2500 per month from sewing and preparing quilts. According to him, for the death of his mother the appellants were solely responsible. In cross, he has stated that his mother was the sole earner in the family and used to make 3-4 quilts a day and earning approximately Rs.2500/-. He denied

that the consumers are responsible for line from pole to the meter. PW2 Salim Khan, the brother of deceased, in his statement has also stated what PW1 Sikandar has stated.

Against the evidence of plaintiffs, defendants examined DW1 Mahesh Kumar Vyas, the then Assistant Engineer serving under the appellants, who has stated that deceased Mumtaz was not the consumer of the electricity board. He though admitted the responsibility of the department for the electricity line upto the meter but stated that the wire for the purpose of fixing from pole to the meter is provided by the consumers. He further stated that from the point of meter and thereafter all the responsibility lies on the consumers and in case of any fault the same is got corrected by the consumers themselves. He denied there being any complaint filed for the fault and stated that after the incident on inspection it was found that there was loose connection in the premises from meter. His cross showed that he

was totally unaware as to in whose name the electric connection was or if any amount against that connection remained due to be paid. He only supported the appellants and denied any complaint having been made. He admitted that the service line contains earth wire and the place where the meter is to be fixed is checked. However, in the instant case it is nowhere the case of the appellants that there was earth wire with the service line.

The point which requires consideration is as to whether the trial Court has properly appreciated the matter and recorded the findings correctly on the issues framed or not?

It is to be seen that the learned trial Court while deciding Issue No.1 & 2 found that deceased Mumtaz died because of negligence on the part of the appellants and the respondent-claimants were entitled to the compensation. The evidence has been discussed in detail and it cannot be said that the trial

Court has not applied its mind or has misread the evidence. Once it is found that the death of deceased Mumtaz occurred on account of the negligence on the part of the appellants then compensation was required to be allowed. The trial Court has decreed the suit only for Rs.67,200/- which in the facts and circumstances is most reasonable whereas in the present case the claim was made to the extent of Rs.6,30,000/-. The learned trial Court considering all aspects of the matter determined the amount of compensation after taking overall facts and circumstances of the case, and it cannot be said that the judgment and decree awarded by the trial Court is without reason and findings are based on misreading of evidence. After careful consideration of the evidence and the material on record, there is no hesitation in agreeing with the Court below that it is a case of fatal accident in which the factum of accident is not disputed by the appellants and it is not disputed that in the said

incident Mumtaz died then the respondent-plaintiffs are entitled to the compensation awarded. Thus, the answer to the point framed is that the trial Court while determining the amount of compensation has correctly discussed the matter and the findings so recorded by the learned trial Court are valid and proper which require to be confirmed and call for no interference by this Court.

In view of the above discussion, there appears to be no merit in this appeal, which is hereby dismissed. However, there shall be no orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa